

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of an Investigation Regarding
Qwest's Compliance with Section 271 of the
Telecommunications Act of 1996 with
Respect to the Provisions of InterLATA
Services Originating in Minnesota

PUC Docket No. P-421/CI-96-1114
OAH Docket No. 12-2500-14473-2

In the Matter of a Commission Investigation
into Qwest's Compliance with Section
271(c)(2)(B) of the Telecommunications Act
of 1996; Checklist items 3, 7, 8, 9, 10, and
12

PUC Docket No. P-421/CI-01-1370
OAH Docket No. 12-2500-14485-2

In the Matter of a Commission Investigation
into Qwest's Compliance with Section
271(c)(2)(B) of the Telecommunications Act
of 1996; Checklist items 1, 2, 4, 5, 6, 11, 13,
and 14

PUC Docket No. P-421/CI-01-1371
OAH Docket No. 7-2500-14486-2

In the Matter of a Commission Investigation
into Qwest's Compliance with Section 272 of
the Telecommunications Act of 1996's
Separate Affiliate Requirement

PUC Docket No. P-421/CI-01-1372
OAH Docket No. 7-2500-14487-2

In the Matter of a Commission Investigation
into Qwest's Compliance with Section
271(d)(3)(C) of the Telecommunications Act
of 1996 That the Requested Authorization is
Consistent with the Public Interest,
Convenience and Necessity

PUC Docket No. P-421/CI-01-1373
OAH Docket No. 6-2500-14488-2

In the Matter of a Qwest's Statement of
Generally Available Terms (SGAT) Pursuant
to Section 252(f) of the Telecommunications
Act of 1996

PUC Docket No. P-421/CI-01-1374
OAH Docket No. 12-2500-14489-2

In the Matter of the Commission's Review
and Investigation of Qwest's Unbundled
Network Element (UNE) Prices

PUC Docket No. P-421/CI-01-1375
OAH Docket No. 12-2500-14490-2

ELEVENTH PREHEARING ORDER

These matters came on for a motion hearing before Administrative Law Judge Steve M. Mihalchick on February 14, 2002, in the large hearing room of the Minnesota Public Utilities Commission in St. Paul. Some people attended by telephone. The following persons noted their appearances:

Robert Cattenach and Shannon Heim for Qwest.

Priti Patel, Ginny Zeller, and Peter Marker, Assistant Attorneys General, for the Department of Commerce.

Jeanne Cochran, Assistant Attorney General, for the Office of the Attorney General, Residential Utility and Small Business Division.

Lesley Lehr for WorldCom.

Steve Weigler and Rebecca DeCook for AT&T.

Megan Doberneck for Covad.

Marc Fornier, Diane Wells, and Lillian Brion for Commission staff.

These matters are before the Administrative Law Judges on two Qwest motions and one Covad motion.

QWEST MOTION TO DEFER COST AND RATE ISSUES FROM 1370 TO 1375

1. On February 5, 2002, Qwest filed a Motion to Clarify, and Defer Cost and Rate Issues. The underlying issue raised by the motion is whether Qwest's use of "market-based" rates for operator services, white pages listings, directory assistance, and Directory Assistance List information satisfies the requirement that rates be just, reasonable, and nondiscriminatory or whether Qwest must charge TELRIC-based rates.

2. Qwest and the Department, with concurrence of the other parties, entered into and filed a Stipulation Regarding Market-Based Rates that establishes the procedure for resolving the underlying issue.

3. Under the Stipulation, the issue of what pricing standard to apply to the services listed above will be determined by the Administrative Law Judge in the Non-OSS Checklist Item Docket, PUC Docket No. P-421/CI-01-1370. If the Administrative Law Judge rules that costs are necessary to evaluate or establish prices for the services, those costs will be determined in the Pricing Docket, PUC Docket No. P-421/CI-01-1375.

4. The Stipulation is hereby approved. As discussed at the motion hearing, the parties will file legal argument on the pricing standard issue by February 26, 2002.

QWEST MOTION TO COMPEL

5. On February 7, 2002, Qwest filed a Motion to Compel regarding discovery of data the Department had gathered from CLECs about services provided in Minnesota. Some of the CLECs are parties to these Section 271 dockets, some are not. The information requests were on forms indicating that they were related to one or more of these dockets. The CLECs responded to the information requests. Many of the CLECs provided data on numbers of customers or customer identification to the Department stating that it was confidential trade secret information and not to be released. Qwest requested that information. The Department provided Qwest the data identified as trade secret by the CLECs who are parties to this proceeding and have signed the Protective Agreement in effect here. However, the Department has refused to provide the trade secret data of the CLECs who are not parties and thus have not signed the Protective Agreement. The Department may provide that data only if the provider consents, it is reclassified under Department procedures, or an Administrative Law Judge orders it produced under Minn. Stat. § 13.03, subd. 6.

6. While Qwest raises questions about the Department's internal procedures, the Administrative Law Judges will not address them. We will consider this matter under Minn. Stat. § 13.03, subd. 6. At the motion hearing, the Department was ordered to provide the disputed documents to the Administrative Law Judges for *in camera* review as required by the statute. On February 19, 2002, the Department filed copies of eight responses to information requests for which trade secret status was claimed. We have reviewed the documents submitted.

7. One CLEC submitted a document in Docket 1370 that consists of a white pages verification listing of their customers, which had been provided to them by Qwest. Another CLEC submitted an E911/Directory Assistance DB Info listing of their customers that appears to be the same type of listing, also provided to them by Qwest. One CLEC produced a complaint log of SS7 and Other Caller ID issues involving Qwest that also contains the customer information for each complaint. The documents submitted by the three CLECs are discoverable because they contain information that may be relevant to issues in this proceeding. However, CLECs consider information identifying customers to be extremely valuable and confidential. The value of the information to Qwest for use in this proceeding is quite low. Moreover, these listings contain information Qwest already has in its possession. Therefore, Qwest's need for the documents does not outweigh the CLECs' interest in maintaining the confidentiality of the documents. They need not be disclosed.

8. Five CLECs submitted trade secret documents in Docket 1373 in response to Information Request No. 18007, which asked for the number of residential and business customers by exchange or zip code. Again, this information is discoverable because it is relevant to issues in this proceeding, but the CLECs also consider information identifying their penetration levels to be extremely confidential.

Qwest suggested that the CLEC names be masked, but even then it would be rather easy to identify the CLECs from the data. Within Qwest territory, which is all that is relevant, Qwest should have this information itself as the CLECs are reselling Qwest services or interconnecting to the Qwest network. Qwest is entitled to know what numbers the Department has and may use, but the numbers for individual CLECs are irrelevant. Balancing these considerations, the Administrative Law Judges order that the Department provide Qwest a compilation of the data it has, including that from the documents at issue here, for the number of residential and business customers of CLECs in Qwest's territory in Minnesota, aggregated by area code, e. g., 218, 507, etc. The Department shall provide that data to Qwest within ten business days. Because of the level of aggregation, it should be impossible to identify the business level of any individual CLEC. Therefore, the compilation shall be public data and no notice to the CLECs shall be required.

9. The documents submitted for *in camera* review shall be returned to the Department.

COVAD MOTION TO COMPEL

10. On February 12, 2002, Covad filed a Motion to Compel Discovery. The motion seeks to compel Qwest to respond to Covad Information Request 24. Qwest filed a response to the motion on February 19, 2002. The essence of the response was that Qwest had been compiling the requested data all along and was sending Covad a supplemental response that day providing the requested data in summary form.

11. Covad IR 24 intended to explore Qwest's representations about its "basic installation with cooperative testing" offering. It was sent December 28, 2001, and requested performance testing and cooperative testing data on loops recently ordered by Covad. Qwest objected that the data was irrelevant. On February 7, 2002, Covad explained to Qwest why it wanted the data and asked that the response be supplemented. Without agreeing to Covad's position, Qwest agreed to do so.

12. Covad is trying to understand and test Qwest's explanations about its offering. That is reasonable because there may be some lack of clarity in what Qwest intends. It would have been better if Qwest had objected to IR 24 but at the same time agreed that it would provide the data. Instead the agreement came many days later. Given the workload everyone is under in this proceeding, Qwest's effort to respond was adequate. However, Qwest should now be supplementing its summary format response with the detail listings Covad asked for in IR 24.

13. Qwest shall provide a full and complete response to Covad IR 24 by February 27, 2002.

February 21, 2002

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
ALLAN KLEIN
RICHARD C. LUIS
Administrative Law Judges